

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BREEANNE BUCKLEY PENI, Individually,
and on Behalf of All Others Similarly Situated,

Plaintiff,

Civil Action No.: 22-CV-05443
Honorable Denise Cote

v.

DAILY HARVEST, INC. and SECOND BITE
FOODS, INC. d/b/a “STONE GATE FOODS”,
SMIRKS, LTD., AND MOLINOS ASOCIADOS
SAC,

Defendants.

**CONSENT MOTION TO ESTABLISH
THE PENI QUALIFIED SETTLEMENT FUND II**

COMES NOW the Settlement Administrator, Edgar C. Gentle, III, and moves this Honorable Court for an Order establishing a Qualified Settlement Fund in this matter under Internal Revenue Code § 468B that shall be called the Peni Qualified Settlement Fund II (the “Fund”). In support of this Motion, the Settlement Administrator states as follows:

1. The Parties have reached a proposed settlement and compromise of the disputes between them in this action as set forth in the Class Action Settlement Agreement (the “Agreement”), which was preliminarily approved by the Court in its Order Granting Preliminary Approval of Settlement on October 9, 2024.

2. Pursuant to Section 4 of the Agreement, within ten (10) business days, after the Preliminary Approval Order was signed on October 9, 2024, Plaintiff’s Counsel and the Settling

Insurers shall pay a total of \$50,000 to the Fund for the Settlement Administrator to provide Class Notice. Establishment of the Fund is therefore now ripe.

3. The Settlement Administrator will obtain a Federal Taxpayer Identification Number for the Fund upon execution of an Order by this Court establishing the Fund.

4. Edgar C. Gentle, III, respectfully requests that the Court grant the Settlement Administrator authority to conduct all activities necessary to administer the Qualified Settlement Fund consistent with the Parties' Settlement Agreement, the Court's Order granting Preliminary Approval of the Settlement, and any further Orders of the Court.

5. Edgar C. Gentle, III, further respectfully requests that the Court retain personal jurisdiction over the QSF and the Claims Administrator until such time as the fund is exhausted pursuant to the Parties' Settlement Agreement and the Court discharges the Claim Administrator from his duties and responsibilities imposed by the Order appointing him.

6. To the extent any paragraphs in this Motion conflict, or are in any way inconsistent, with the terms and conditions of the Agreement, the Agreement shall control.

WHEREFORE the Settlement Administrator respectfully requests the Court consent to take continuing jurisdiction over the Fund, pursuant to Treas. Reg. Section 1.468B-1(c)(1), and issue an Order which:

Establishes said Peni Qualified Settlement Fund II as a Qualified Settlement Fund within the meaning of Internal Revenue Code § 468B and Treasury Regulation Section 1.468B-1.

Dated: October 21, 2024

/s/ Edgar C. Gentle, III
Edgar C. Gentle, III

The Court Appointed Settlement
Administrator
Gentle Turner & Benson, LLC
501 Riverchase Parkway East, Suite 100
Hoover, Alabama 35244
(205) 716-3000
egentle@gtandslaw.com

HEISMAN NUNES & HULL LLP

By: /s/ Paul V. Nunes
Paul V. Nunes, Esq.
Bar No.: PN2853
1630 Empire Blvd., Suite 3B
Webster, NY 14614
Telephone: (585) 270-6922
Pnunes@hnhattorneys.com

MARLER CLARK, LLP, PS

By: /s/ William D. Marler
William D. Marler, Esq.
The Standard Building
1012 1st Avenue, Fifth Floor
Seattle, Washington 98104
Telephone: (206) 346-1888
Bmarler@marlerclark.com

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2024, I electronically transmitted the foregoing document to the Clerk of the United States District Court using the CM/ECF system for filing and service to all parties/counsel registered to receive copies in this case.

Dated: October 21, 2024

Respectfully submitted,

/s/ Edgar C. Gentle, III

Edgar C. Gentle, III

The Court Appointed Settlement Administrator

Gentle Turner & Benson, LLC

501 Riverchase Parkway East, Suite 100

Hoover, Alabama 35244

(205) 716-3000

egentle@gtandslaw.com